

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to D.C. Official Code § 47-2844 (a-1) and Mayor's Order 09-163, dated September 25, 2009; section 105 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.05)(2007 Rpl.) and Mayor's Order 99-68, dated April 28, 1999; and D.C. Official Code § 47-2851.20, hereby gives notice of the adoption of a new Chapter 16 (DCRA Summary Enforcement Actions) of Title 16 of the District of Columbia Municipal Regulations.

This rulemaking establishes regulations for the revocation of a basic business license issued to a massage establishment, a health spa, an overnight accommodation, or other establishment, and for the sealing, pursuant to D.C. Official Code § 2-1801.06, of premises used to operate a massage establishment or health spa without a basic business license or to engage in prostitution-related activity.

Emergency and proposed regulations were published in a Notice of Emergency and Proposed Rulemaking on October 2, 2009, in the *D.C. Register* at 56 DCR 7857. No comments were received and no changes have been made to the rulemaking.

These final rules will be effective upon publication of this notice in the *D.C. Register* and supersede the emergency rulemaking adopted by the Director on September 25, 2009.

A new Chapter 16 is added to DCMR Title 16 to read as follows:

CHAPTER 16 DCRA SUMMARY ENFORCEMENT ACTIONS

Secs.

1600	Revocation of License
1601	Sealing of Premises
1602	Notice and Hearing
1603	Civil Penalties

1600. REVOCATION OF LICENSE

1600.1 The Director of the Department of Consumer and Regulatory Affairs (Director) shall revoke a licensee's basic business license with a Public Health: Public Accommodations license endorsement, a Housing: Transient license endorsement, or a General Business endorsement, if the licensee has knowingly permitted, on the licensed premises, any act that violates a provision of D.C. Official Code §§ 22-2701, 22-2705 through 22-2707, or 22-2710 through 22-2712.

- 1600.2 A finding that a licensee has knowingly permitted, on the licensee's premises, an act that violates D.C. Official Code § 22-2701, 22-2705 through 22-2707, or 22-2710 through 22-2712, may be based on, among other things:
- (a) Furnishings on the premises that are better suited for prostitution than for the lawful activity or activities for which the premises are licensed;
 - (b) Overnight accommodations at the premises that are commonly used by customers for brief periods not exceeding two (2) hours; or
 - (c) A past arrest at the premises for:
 - (1) An act of solicitation for prostitution; or
 - (2) Any other prostitution-related violation.

1601. SEALING OF PREMISES

- 1601.1 If any premises are primarily used to operate a massage establishment or health spa without a basic business license or engage in activity that violates any provision of D.C. Official Code §§ 22-2701, 22-2705 through 22-2707, or 22-2710 through 22-2712, the Director may order the sealing of the premises, or portion of the premises, for up to sixty (60) days, in accordance with the provisions of D.C. Official Code § 2-1801.06.
- 1601.2 An order issued by the Director pursuant to § 1601.1 shall be accompanied by findings of fact and conclusions of law.
- 1601.3 A finding that the premises are primarily used to engage in activity that violates D.C. Official Code §§ 22-2701, 22-2705 through 22-2707, or 22-2710 through 22-2712 may be based, among other things, on a totality of the circumstances at the premises, including, but not limited to, the presence of furnishings or sexually-oriented items that are more suited for prostitution than for lawful commercial use of the premises.
- 1601.4 During the period of time that the premises, or portion of the premises, are ordered sealed pursuant to § 1601.1, any unauthorized entry at the premises shall be grounds for the Director to extend the order sealing the premises for up to an additional one hundred eighty (180) days.
- 1601.5 For a period of one hundred eighty (180) days after the lifting of an order sealing the premises, or portions of the premises, any further use of the premises to operate a massage establishment or health spa without a license or engage in activity that violates any provision of D.C. Official Code §§ 22-2701, 22-2705 through 22-2707, or 22-2710 through 22-2712 shall be grounds for the Director to

order the sealing of the premises for a new period of up to one hundred eighty (180) days.

1602. NOTICE AND HEARING

1602.1 Concurrent with an order issued by the Director, pursuant to this chapter, revoking a licensee's license or sealing any premises, the Director shall post at the premises and serve on the licensed or unlicensed establishment, a written notice and order stating:

- (a) The specific action or actions being taken;
- (b) The factual and legal bases for the action or actions;
- (c) The right, within seventy-two (72) hours of service of the notice, to request a hearing with the Office of Administrative Hearings;
- (d) The right, within seventy-two (72) hours of a timely request being received by the Office of Administrative Hearings, to a hearing before an administrative law judge; and
- (e) If the premises are ordered sealed, that it shall be unlawful for any person to enter the sealed premises for any purpose without written permission of the Director.

1602.2 For purposes of this section, notice shall be deemed to have been served:

- (a) On a licensed establishment, if delivered to the registered agent's address of record, during normal business hours; or
- (b) On an unlicensed establishment, if delivered to the property owner of record pursuant to the provisions of D.C. Official Code § 42-3131.03.

1603. CIVIL PENALTIES

1603.1 Civil fines, penalties, and fees may be imposed as additional sanctions for any infraction of this chapter pursuant to D.C. Official Code §§ 2-1801.01 *et seq.*

1603.2 Adjudication of any infraction of this chapter shall be pursuant to D.C. Official Code §§ 2-1801.01 *et seq.*